STATE OF MICHIGAN

COURT OF APPEALS

KATHERINE G. ROBERTS,

Plaintiff-Appellant,

v

THE HOUGHTON LAKE ADULT and COMMUNITY EDUCATION CENTER,

Defendant-Appellee.

UNPUBLISHED
April 27, 1999

No. 206751
Roscommon Circuit Court
LC No. 96-007454 NO

Before: Gage, P.J., and Gribbs and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff worked as an aide in defendant's child care center. The children in plaintiff's care included infants and toddlers. In December, 1994 plaintiff sustained nonwork-related neck and back injuries. On January 16, 1995 she returned to work with a restriction against engaging in any lifting whatsoever. Shortly after beginning work plaintiff reinjured her back when she attempted to catch a child who was about to fall off a chair. On January 16, 1995 plaintiff tendered her letter of resignation to defendant.

In the summer of 1995 plaintiff telephoned defendant and inquired about returning to work as a child care aide. She was told that no positions were available at the time. Plaintiff did not submit a written application for employment. Subsequently, two substitute aides were hired.

In April, 1996 plaintiff filed suit pursuant to the Michigan Handicappers' Civil Rights Act (HCRA), MCL 37.1101 *et seq*.; MSA 3.550(101) *et seq*., alleging that her back injury constituted a handicap or perceived handicap as defined in the HCRA, and was unrelated to her ability to perform the duties of a child care aide. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing in the alternative that plaintiff was never a candidate for an available position because she did not complete an application, or that her lifting restrictions precluded her from

performing the essential functions of a child care aide. The trial court granted the motion, finding that even assuming that the telephone inquiry constituted an application, plaintiff had not established a prima facie case of discrimination under the HCRA. Plaintiff's lifting restriction of five pounds precluded her from performing the essential duties of a child care aide.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

To recover under the HCRA, a plaintiff must plead and prove: (1) that she is handicapped as defined by the HCRA (a determinable physical or mental characteristic that substantially limits one or more major life activities and is unrelated to the ability to perform the duties of a particular job, MCL 37.1103(e); MSA 3.550(103)(e)); (2) that the handicap is unrelated to her ability to perform the duties of a particular job, with or without accommodation; and (3) that she was discriminated against in one of the ways set forth in the statute. *Hall v Hackley Hospital*, 210 Mich App 48, 53-54; 532 NW2d 893 (1995).

Plaintiff argues that the trial court erred by granting defendant's motion. We disagree and affirm. Even assuming arguendo that plaintiff was a candidate for employment with defendant, and thus protected by the HCRA, MCL 37.1202(1); MSA 3.550(202)(1), defendant was entitled to summary disposition of plaintiff's claim. A handicap must be unrelated to an applicant's ability to perform the essential duties of a particular job. *Hall*, *supra*. While heavy lifting has never been listed as a formal requirement of the job of child care aide, the "duties of a particular job are not determined solely by reference to the employer's definition of the job," *Szymczak v American Seating Co*, 204 Mich App 255, 258; 514 NW2d 251 (1994). The record in this case demonstrates that lifting children was an essential duty of the job of child care aide. Further, plaintiff's disability could not be reasonably accommodated. Accommodation of a handicap in the form of job restructuring applies only to minor or infrequent duties, MCL 37.1210(15); MSA 3.550(210)(15), and accommodations beyond those listed in § 210 must not impose undue hardship on an employer. *Rourk v Oakwood Hosp Corp*, 458 Mich 25, 36; 580 NW2d 397 (1998). Given plaintiff's acknowledged lifting restriction of five pounds, accommodation of her handicap would require scheduling another employee to work with her at all times and to assume responsibility for all lifting required in the center. No reasonable accommodation of plaintiff's handicap could be provided. No genuine issue of fact existed regarding whether plaintiff could perform the essential duties of a child care aide. Summary disposition was properly granted.

Affirmed.

/s/ Hilda R. Gage
/s/ Roman S. Gribbs
/s/ Joel P. Hoekstra